

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ANTHONY MARSHALL, #1488770 §
VS. § CIVIL ACTION NO. 2:09cv276
DIRECTOR, TDCJ-CID §

MEMORANDUM OPINION AND ORDER
DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Came on for consideration, the Petitioner's motion to proceed *in forma pauperis* on appeal (docket entry #31).

On April 19, 2012, the assigned Magistrate Judge filed a Report and Recommendation (R&R) that Petitioner's petition be dismissed with prejudice (docket entry #25). The Petitioner then filed objections (docket entry #27) to the Magistrate Judge's R&R. His objections largely restated his original arguments with some additional argument relating to some of his grounds for relief.

However, on a *de novo* review, the Court overruled Petitioner's objections, adopted the R&R, denied all relief and dismissed Petitioner's habeas petition with final judgment entered on May 31, 2012. The Court denied a certificate of appealability ("COA") at the same time.


For the reasons stated in the Report and Recommendation and the Order Adopting Report and Recommendation and dismissing Petitioner's habeas petition, Petitioner does not have a "good faith" non-frivolous issue for appeal as required for leave to proceed *in forma pauperis*. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A); *Baugh v. Taylor*, 117 F.3d 197, 202 n.21 (5th Cir. 1997) (To comply with Rule 24 and to inform the Court of Appeals of the reasons for its certification, a district court may incorporate by reference its order dismissing an appellant's claims (in the context of a civil rights action pursuant to 42 U.S.C. § 1983)). Furthermore, because the Petitioner has not shown that he is entitled to a certificate of appealability, he also has not shown that he is entitled to proceed *in forma pauperis* on appeal. *United States v. Delario*, 120 F.3d 580, 582-

83 (5th Cir. 1997). Therefore, Petitioner is denied leave to proceed *in forma pauperis* on appeal.

It is accordingly

ORDERED that the motion to proceed *in forma pauperis* on appeal (docket entry #31) is **DENIED**. All future motions should be filed with the Clerk of the United States Court of Appeals for the Fifth Circuit.

So ORDERED and SIGNED this 29th day of June, 2012.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE